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## Before You Log-On: Incorporating the Free Web in Your Legal Research Strategy

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# Before You Log-On: Incorporating the Free Web in Your Legal Research Strategy

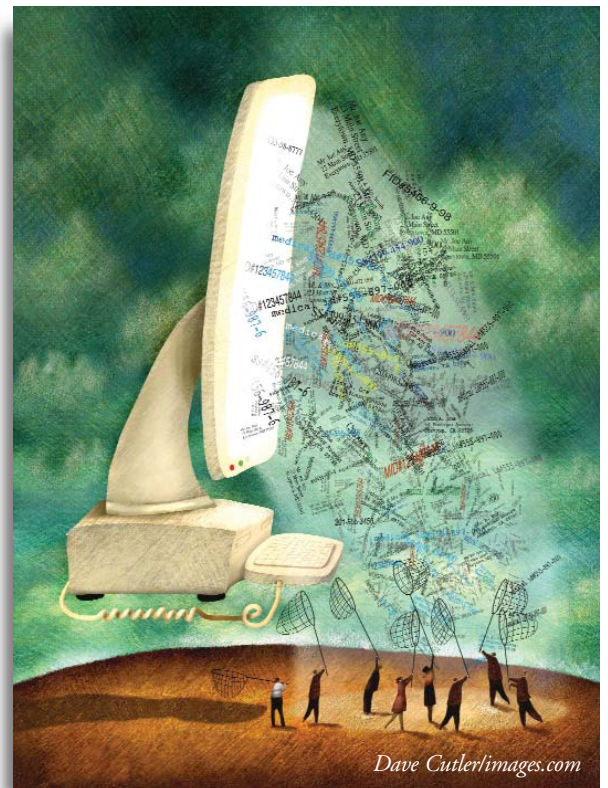
BY LAUREN M. COLLINS

In 2006, the American Bar Association published its Legal Technology Survey Report, which included a volume on Online Research. In the report, attorneys responded that 91% are conducting at least some of their research online. Though 39% report that they start their research using a fee-based service like Westlaw or Lexis, the report shows that even those who start their research with a fee-based resource eventually get it right—87% of attorneys report using some free online resources at some point over the course of a research project.

Hopefully, those attorneys who said they used free web resources did not count databases within Lexis and Westlaw that were within their flat-fee agreement. When using items within these agreements, many tend to discount the volume of use. Though it is more economical for most large firms to negotiate flat rate contracts with the titans of legal information these days, a "flat rate" should not be perceived as "all-inclusive" or, horror of horrors, "free." The usage levels of

these resources are now more frequently scrutinized by astute clients (who sometimes refuse payment for unwarranted fees charged back to them) and are always considered by the vendor in future negotiations. Thus, the volume of use for Lexis and Westlaw is relevant no matter what the current billing arrangement might be, which makes the integration of truly free resources in the online research strategy a must for any legal practitioner who cares about the bottom line.

Another hope is that attorneys, trained in critical thinking, are giving serious consideration to the web resources we use. Because of the ease in locating information on the Internet, users have to be critical of the resources they find. Questions about the accuracy, authority, currency, objectivity, and the scope of coverage of web resources should always be asked before a practitioner is comfortable relying on web information. As professionals who are familiar with legal authori-



ty, however, these checks on the information we rely upon are not new to us.

The challenge in conducting good legal research is using print, fee-based and free web resources as a part of a well-planned research strategy best suited for your research needs. There are certainly times when turning to Lexis or Westlaw as a place of first resort is warranted, but it should not be done simply out of habit. Judges are now citing free web resources,<sup>1</sup> so why wouldn't practitioners be using them?

What exactly should you do before you log onto a fee-based legal resource? Several years ago, this was a question best and simply answered by providing a list of links to reliable free web resources. An attempt to list all of the resources that might be relevant to a North Carolina attorney which are available on the web would be long and require constant updating. Now that free web resources have become so prevalent, rather than provide an exhaustive list, suggested strategies to help the practitioner determine when to make use of the free web as a part of his or her legal research plan are more appropriate. When should you go straight to Lexis or Westlaw without passing "GO"? When do you use the resources of the Government Printing Office, a federal agency or a state, county, or local government webpage? When is the best idea just to "Google" it?

### State Primary Law

Primary sources of law are pervasive on the free web. It is easier and less expensive for legislatures, courts, and administrative agencies to provide web access to their own material than to pay print publishing and distribution costs that have gotten official versions of the primary law to practitioners in the past. The good news is that many government agencies, which have been notoriously slow getting their publications to us by traditional means, are now much timelier. The bad news is twofold. First, though access to current information is much improved, it is not always the current statute or the most recent case that the legal practitioner is looking for, and older information can be more difficult to find on the free web. In addition, though provided directly by the governmental entities promulgating the laws, most online resources have not been stamped "official" or "authentic" by those agencies. A lack of authentication means that no person or machine has verified the text of the statutes online and compared



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the language to that found in the official, approved print version of the statutes. A lack of official status means that errors in the text will be resolved in favor of print versions of the publication.

As an example, the current North Carolina General Statutes are available at no charge on the North Carolina General Assembly website. The statutes have neither been deemed official nor authentic. The website carries a clear caution on the opening page that they are not to be considered official versions and that the General Assembly "will not be responsible for any errors or omissions" in the files. To provide some context, only seven states and the District of Columbia have deemed their online statutes as official and none have authenticated any of their primary legal resources. However, in the case of North Carolina, though not given official status, the online text comes from the same system used to generate the print text of the statutes and materials prepared for the legislature's internal use.<sup>2</sup> Additionally, there are no documented cases where courts have adjudicated the question of the official status or authenticity of online primary resources.<sup>3</sup>

The primary goal of the legislature in making statutes available is access, and for that purpose, the General Statutes online represent a step forward. The drawbacks of using such resources are most daunting for *pro se* litigants who are not, as attorneys, trained to think critically and are more likely to fail to consider the pitfalls of using non-traditional legal resources before deciding on what they should rely.

One reason that statutes generally are resources whose web versions we have been quick to adopt is the idea that current versions of statutes are frequently sufficient to meet our research needs. Problems with historical versions of statutes and session laws are often presented with regard to access in addition to questions of trustworthiness. Historical versions of the compiled North Carolina General Statutes are available on Lexis (1991 -) and Westlaw (1986 -). The General Assembly website does not make full compiled codes available as they existed at any time other than the present. North Carolina's scope of session laws available on the free web, however, are impressive with Local Laws beginning with the 1961 session and Public

Laws beginning with the 1983-1984 session. If you are looking for a law as it was passed prior to its codification or need to trace the history of a specific statute, the free resource will provide you with what you need, with the caveats, again, of authenticity and official status applied to the General Statutes.

The rules for access to administrative law are generally similar to those for statutory law. Current versions of administrative codes are normally all that are available on the free web from official sources. This is true in North Carolina; the Office of Administrative Hearings makes the NC Administrative Code available at no charge. Again, just as with the state's statutes, this version has not been declared official and there are no historical versions of the Code available. For historic versions of the Administrative Code, rely on Westlaw, which provides them as early as 2002, or your local law library.

Generally, case law research is a less likely candidate for free research resources than statutory or administrative law. Though most courts, like legislatures, now provide their case law on the web, few, when adding case law to the web, included older cases. In North Carolina, the Supreme Court opinions are available beginning in 1997 and the court of appeals beginning in 1996, with both courts' cases extending to the present. In addition to the limited scope of case law on the free web, advanced features that enable updating using fee-based services are unavailable for free case law. Recognizing this fact, both Westlaw and Lexis provide pay-as-you-go Shepard's and KeyCite options, each of which are presently less than ten dollars per search. Again, where there are any discrepancies between the opinions accessible online and the print versions, the print remains authoritative.

### Federal Primary Law

Federal primary law is also readily available on the web. The Government Printing Office (GPO), which still publishes official versions of the United States Code, the Federal Register, and the Code of Federal Regulations, also makes these available online on their website GPO Access. The Federal Register and the USC are both available as early as 1994 and the CFR is available beginning with the 1996 edition. Many characteristics of these various publications such as shelf size, frequency, and publishing delay make electronic access easier for GPO and more convenient for the user. The "official"

status of these resources varies based upon their governing bodies. Thus, the Administrative Committee of the Federal Register, according to a GPO White Paper on Authentication, has declared the online versions of CFR and the Federal Register are official. This, however, is not the case with the Code as is specifically stated on the GPO Access website.

Another limitation of the resources housed on GPO Access is limited search capability. Unlike Google and other search engines that we use every day, functional searching is not the main goal of the GPO. Therefore, GPO Access resources are better for retrieval of information by citation than subject searching. Documents in GPO databases are, however, accessible by Google searching. Therefore, searches using precise language or the advanced searching features of Google such as the ability to search within a specified site or domain can help you circumvent imprecise GPO Access searching.

Federal case law on the web is not as limited by scope as state case law. Supreme Court cases, for example, are accessible from 1790 from LexisOne, a free service that provides some Lexis products to registered users. Other sites like FindLaw, GPO Access, and the Supreme Court's own site, provide access to cases with various date ranges as early as the 1800s. Again, the printed United States Reports are the only "official" resource for Supreme Court opinions, but the Court makes PDF versions of its bound volumes available as early as 1991 and early access to bench opinions on the Court website is available as soon as final decisions are released.

Administrative law and presidential documents are also readily available through GPO Access. Many agencies now link the statutes governing their activities, the regulations they create, their procedures, and policies together on their own websites. Links to federal agency websites are available through USA.gov, an interagency website administered by the US General Services Administration's Office of Citizen Services and Communications.

### State Bar Association Websites

Thirty-four percent of respondents to the Law Technology Resource Center Survey Report who start their legal research on the free web start with their state bar association website. In North Carolina, this is an excellent idea: the NC Bar Association subscribes to Casemaker, an online resource provided

through some state bar associations that gives access to those organizations' members without additional charge. The NC database provides access to the current versions of the state General Statutes and Administrative Code, as well as NC Supreme Court cases beginning in 1939, and court of appeals cases beginning in 1968. In addition, there are court rules, municipal codes, and a wide array of federal materials relevant to the NC practitioner. Casemaker also provides access to law school journals that, except for current versions, are not generally available free of charge on the web.

### Other Jurisdictions

When you are faced with researching the law of another jurisdiction, both Lexis and Westlaw provide help on the free web. FindLaw, which started out as an independent resource but was purchased by the Westlaw parent, Thomson, provides links to government sites that contain primary information for federal, state, and some international jurisdictions. In addition, there are links to other helpful resources like state boards of bar examiners, law schools across the nation, and firm webpages, which can be helpful to the legal practitioner if scrutinized for issues like bias and the trustworthiness of the firm's attorneys.

Similarly, Lexis provides LexisOne, billed as a resource for small firms, which provides some free information including forms, a full run of US Supreme Court cases, and other case law for the past five years. Users may also opt to pay as they go and use other Lexis databases through LexisOne.

Other lower-cost alternatives to Lexis and Westlaw include Fastcase, VersusLaw, and LoisLaw. Each provides various primary resources of varying scope, often broader than the free databases, but normally not as complete as Lexis and Westlaw coverage. These services are often associated with print publishers, which allows access to treatises, and have updating systems similar to Shepard's and KeyCite. Another very useful feature is their free trials, which allow practitioners to test each of these resources before making a full investment. Note, however, that a full investment is very inexpensive. The most costly Professional Plan for VersusLaw, for example, is about \$40 per month.

### Secondary Resources

In comments made by attorneys respond-



ing to the 2006 ABA Legal Technology Survey, sites created by other practitioners were cited as free, web-based resources often used by practitioners. This fact brings to light one of the important limitations of free web research—provenance. The sources of primary law discussed in the previous sections all have one thing in common, whether the documents provided are declared "official" or not, the sources clearly are. The source for the NC General Statutes is the NC General Assembly. The sources for North Carolina case law are the North Carolina courts themselves. Rarely are the time-tested secondary resources written by respected scholars and practitioners available freely online due, in large part, to copyright restrictions. Many such publications are, however, available in Lexis or Westlaw if published by LexisNexis or Thomson-West. Even those treatises on Lexis and Westlaw may be out of date, so remember to check your information button before deciding on an electronic resource over the print.

If a practitioner's guide is what you seek, you'll do best to rely on the resources you always have. Survey responses indicate practitioners are well aware that traditional secondary resources are not normally freely accessible on the web. Forty percent of respondents continue to use print resources when they need to consult treatises or other secondary materials. That number is decreased by half or better when attorneys are looking for forms, legal news, or law reviews and legal periodicals. These resources, as with the primary law, are frequently more easily accessed online where current versions are sought.

If you think of secondary sources more broadly, the web can be much more helpful. For example, if you need a research aid, you will find many research guides developed by legal information experts—librarians—on the web. These guides can be especially helpful when you are researching law in an unfamiliar jurisdiction or practice area. Research guides developed by law librarians tend to be unbiased, are frequently updated, and are created by someone who conducts frequent research and may even teach legal research in the jurisdiction in question. In addition to the law library's own website, a common repository for research guides is the Law Library Resource Xchange.

The Legal Information Institute, sponsored by the Cornell Law School and user donations, is a unique secondary legal

**For those who still want website recommendations, here are several that are mentioned in this article:**

### **North Carolina Websites**

**NC General Assembly:** [www.ncga.state.nc.us](http://www.ncga.state.nc.us)

**NC General Statutes:** [www.ncga.state.nc.us/gascripts/statutes/Statutes.asp](http://www.ncga.state.nc.us/gascripts/statutes/Statutes.asp)

**NC Court Opinions Online:** [www.aoc.state.nc.us/www/public/html/opinions.htm](http://www.aoc.state.nc.us/www/public/html/opinions.htm)

**NC Administrative Code:** <http://reports.oah.state.nc.us/ncac.asp>

**NC Casemaker (through the NC Bar Association):** [www.ncbar.org/casemaker/index.aspx](http://www.ncbar.org/casemaker/index.aspx)

### **Federal Websites**

**GPO Access:** [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)

**US Supreme Court Official Website:** [www.supremecourtus.gov/](http://www.supremecourtus.gov/)

**Supreme Court Decisions on FindLaw:** [www.findlaw.com/casecode/supreme.html](http://www.findlaw.com/casecode/supreme.html)

**USA.gov Agency A-Z List:** [www.usa.gov/Agencies/Federal/All\\_Agencies/index.shtml](http://www.usa.gov/Agencies/Federal/All_Agencies/index.shtml)

**Legal Information Institute:** [www.law.cornell.edu/](http://www.law.cornell.edu/)

### **Other Helpful Sites**

**American Association of Law Libraries State by State Report on Authentication of Online Legal Resources:** [www.aallnet.org/aallwash/authenreport.html](http://www.aallnet.org/aallwash/authenreport.html)

**Law Library Resource XChange:** [www.llrx.com](http://www.llrx.com)

**Lower-Cost Alternatives to traditional Lexis & Westlaw**

- **LoisLaw:** <http://loislaw.com/>

- **VersusLaw:** <http://versuslaw.com/>

- **FastCase:** <https://www.fastcase.com/Corporate/Home.aspx>

- **LexisOne:** <http://www.lexisone.com/>

- **Shepard's Pay as you go:** [http://web.lexis.com/xchange/forms/uas/casepullcheck.asp?\\_svc=SH&loc=LEX1](http://web.lexis.com/xchange/forms/uas/casepullcheck.asp?_svc=SH&loc=LEX1)

- **Westlaw by Credit Card (including KeyCite):** <http://creditcard.westlaw.com/welcome/frameless/default.wl>

**MoreLaw Verdicts:** [www.morelaw.com/verdicts/](http://www.morelaw.com/verdicts/)

**Jury Verdict Research:** [www.juryverdictresearch.com/index.html](http://www.juryverdictresearch.com/index.html)

**NC Lawyers Weekly:** [www.nclawyersweekly.com/](http://www.nclawyersweekly.com/)

**Campbell Law Library:** <http://law.campbell.edu/information-resources/>

**Charlotte School of Law Library:** [www.charlottelaw.org/lawlibrary/](http://www.charlottelaw.org/lawlibrary/)

- **Research Guides:** [www.charlottelaw.org/lawlibrary/default.asp?PageID=170](http://www.charlottelaw.org/lawlibrary/default.asp?PageID=170)

**Duke Law Library:** [www.law.duke.edu/lib/](http://www.law.duke.edu/lib/)

- **Research Guides:** [www.law.duke.edu/lib/research\\_guide](http://www.law.duke.edu/lib/research_guide)

**Elon School of Law Library:** [www.charlottelaw.org/lawlibrary/default.asp?PageID=170](http://www.charlottelaw.org/lawlibrary/default.asp?PageID=170)

**NC Central Law Library:** <http://ariel.acc.nccu.edu/law/ilibrary/index.html>

**UNC Law Library:** <http://library.law.unc.edu/>

**Wake Forest Professional Center Library:** <http://pcl.wfu.edu/>

- **Research Guides:** <http://pcl.wfu.edu/PCL-Resources/Guides/index.html>

resource that is from a trusted, unbiased source. Though much of the background information provided on the website is so introductory that it is of limited use for a practicing attorney, even in an unfamiliar area of practice, the site is an extremely effective research tool. Its "Law About" section, which covers topics from ADR to Workplace Safety, brings together primary law on the topics addressed with links to the full text of those

resources. In areas where there is governing federal law, this is particularly helpful as all statutes, regulations, and some federal case law on the topic of interest will be linked together on a single page. In addition, some state law (frequently limited to New York and California), links to international resources, and links to federal agencies are also compiled. When you are struggling to recall the citation to the governing federal statute or

related regulations on a topic, this is an excellent place to find your reminder.

## Practice Tools

Rarely do attorneys reinvent the wheel when it comes to developing legal documents; from pleadings to contracts, we frequently recycle. Locating sample pleadings on the web can be tricky and what you find is likely to require some work before it will be useful to you. Though you may find free briefs, motions, complaints, or other pleadings on the web, you may not be able to find materials specific to your jurisdiction or area of law or those that come from reliable sources.

As a starting point, you may find legal pleadings and briefs to use as samples on the websites of organizations that routinely represent the legal interests of their constituencies such as the American Civil Liberties Union, as well as associations that represent members of specific professions like the American Bar Association's advocacy webpage, sites of corporate litigants related to their own legal matters, and governmental agencies that prosecute legal claims, such as the Department of Justice. The pleading banks of these organizations and parties may provide access to briefs in older cases and may also include the complete pleadings in a lawsuit, as well as complaints and motions.

With the increasing number of briefs available, this may be an instance when you would be justified in beginning your research with a fee-based resource. Westlaw and Lexis are increasing the number of cases for which they provide briefs, though the guidelines about which briefs are selected for inclusion are only that the widest variety of available topics is intended. Additional compensation may also be required for briefs in Lexis and Westlaw. For federal causes of action, the relatively low cost of the Federal Courts' Public Access to Court Electronic Records (PACER) is also a justifiable expense as finding sample briefs on the free web will cost you much more in time.

Many legal forms can be easily found on the web; again, a user must be careful about the source of this information. With forms, official versions are frequently available as it is easier and less expensive for the issuing agency to make them available via the web than it is to provide printed versions. Therefore, the forms of courts and administrative agencies on the federal, state, and local level are

increasingly easy to find electronically on the free web.

One example of an area of law where forms are readily available is bankruptcy. Bankruptcy practice is heavily form-driven and the US Bankruptcy Courts make their official forms available with an instruction guide in PDF form on the US Courts site. Availability of forms in PDF format means the forms you download from the website are the exact forms you would receive from the court, many of which have been developed in interactive formats that allow you to type directly onto the form using your computer. You may also find forms for other federal courts through the US Courts website.

Many federal agencies, particularly those involved with highly regulated industries such as tax, securities, and intellectual property, provide forms for filings right on their websites, some of which can actually be manipulated on your computer, and filings made directly on the site. For these, go directly to the individual website and scan it for links to forms or publications. You will find many forms are accompanied by instruction booklets, which are provided to aid in their completion. To find federal websites and locate official forms, visit GPO Access, or USA.gov and follow the links to the courts or agencies of interest. To find state websites in order to locate official state forms, you may wish to visit a site that compiles links such as FindLaw.

You may wish to search for jury verdicts or settlements to help you determine appropriate damage amounts, and the web can be a valuable resource. Generally, this information is provided by private vendors and reliant upon the accuracy of the information provided by attorneys litigating cases. Some caution should be exercised in determining its reliability, but this is generally the case with settlement information from any source, as it is not systematically collected in most states. Lexis and Westlaw also include some settlement information; however, the same limitations apply and much of this information falls within more expensive billing rates than traditional legal information.

One free resource where jury verdicts can be found is MoreLaw.com. This website includes settlements that can be searched topically, by amount, by attorney, and on a state-by-state basis. Again, the database is dependent upon the submission of verdict information by attorneys so it is not a com-

plete picture of all verdicts made before any particular court or comprehensive settlement information.

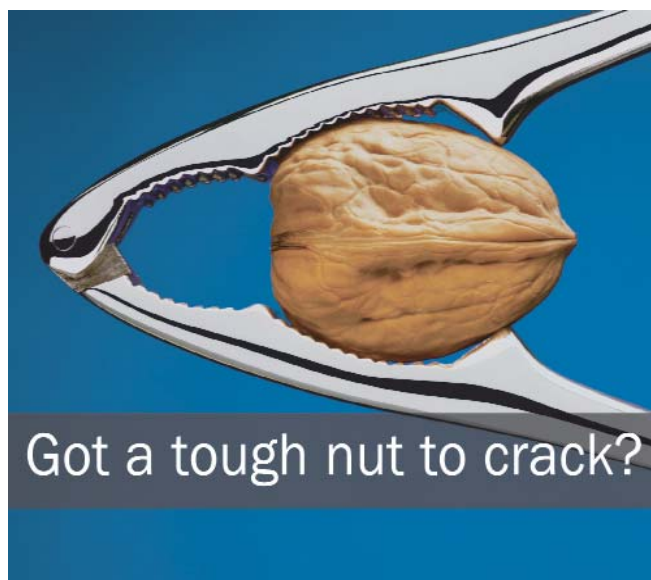
*Jury Verdict Research* is likely familiar to most practitioners in its print format, but its publisher, LRP Publications, also maintains a website. This site provides access to the services of Jury Verdict Research, which includes the performance of case evaluations and accessing a large database of jury verdicts and settlements. These services are not free, but this database is more inclusive of settlements and verdicts from various jurisdictions than many other resources.

Jury verdict and settlement information can also be found in legal newspapers. Many of these have searchable databases on the web. In some cases, access to those databases is a part of a subscription to the newspaper, but it sometimes requires an additional subscription fee. *North Carolina Lawyers Weekly* maintains a website. In its archives, you can search for verdicts and settlements reported in the newspaper back through 1989. This service is included as a part of the newspaper subscription and requires only registration for activation.

## Google It?

"Google" is listed in the Merriam-Webster Online Dictionary as a transitive verb meaning "to use the Google search engine to obtain information about (as a person) on the world wide web." Just because we accept the word as a part of our vocabulary, does that mean we should include it as a part of our legal research strategy? The answer is a definite yes. To everything there is a season. What that is, is heavily dependent on knowing what Google can and *cannot* accomplish.

Briefly, search engines are dependent "spiders" that "crawl" the web retrieving information, which is then cataloged and accessible to the user via mathematical algorithms that determine what the engine finds in response to the information you feed it. Some databases, though freely accessible, are not crawled and, thus, their information is not indexed and retrievable by the average search engine. Other databases that are crawled may have information included that is buried and can only be accessed if you know a direct web address or by several clicks through a website's many pages. Though this barrier to indexing has been diminished over time, there are still, report-



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edly, a large number of pages that remain inaccessible to spiders.

Information may also be hiding if it is stored in tables and tailored information is arranged according to your search request. An example of this is the Census Bureau's American Factfinder, which compiles census data tables according to the parameters you set. Most state statute databases are also set up this way. Another good example of this is a library's online public access catalog (OPAC). Though libraries make access to these openly available to anyone who wishes to use them, because they draw from databases, their information is only accessible if you directly call upon the database to retrieve it. Also inaccessible are paid and password protected databases; even those to which you have access, as a member of a public library for example. Thus, though you may have free access to a database, a search engine cannot surmount the obstacle that your user name and password can. Though Google is getting past some of these challenges—for example, linking Google Books to local library catalogs—you are missing great deals of information on the web if you rely solely on Google or another search engine.

So when is it a good idea to use Google or some other general search engine? Clearly, once you have accessed an item using other means and assessed that none of these barriers exist, Google may be an easy way to return to what you have already found but forgotten to record. Google is also a great device when you have inaccurate information, such as a bad citation, and detective work is necessary to correct it. Perhaps some-

one else has a properly cited resource you are hoping to find on the web. You may have a correct title of a resource, but due to poor formatting of the citation you are unable to discern whether you are looking for a section in a book or an article. Again, Google can aid in the detective work necessary for you to determine whether you need a periodical index or a library catalog to find what you need. This general use of Google works equally well when you need to correct a misspelled name or improperly recorded address or phone number.

The key to using Google, or any other online resource, is learning when to use it and how to use it well. From Google to Lexis and Westlaw, understanding the language that the resource understands is necessary to avoid wading through items only tangentially related to what you hope to find. All electronic searching is wholly dependent upon what you give the system to work with, so you must learn to use the features in advanced searching on the free web as well as tools in Lexis and Westlaw that help you search more precisely. Though the costs of fee-based legal resources are unquestionably high, poor use of those resources is probably as much to blame for much of the exorbitant costs legal practitioners pay as high prices.

### Conclusion

So much has changed about access to information generally in the past 20 years and legal information has been no exception. As was likely the case when Lexis first presented its terminals with software that

allowed access to word processed legal opinions in the 1970s, recent changes in means of access to legal information have outstripped the popular wisdom about the legal authority of the information. Though caution is clearly warranted until these issues are resolved, there is a place in your legal research for the use of free resources. Experienced legal researchers, particularly those who have practiced for a substantial time, have experienced changes before and are used to the introduction of new methods of accessing legal information. Handling the change as we have before, the free web presents opportunities to add to our research strategy arsenal that should not be ignored simply because they are unfamiliar. ■

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### Endnotes

1. Coleen M. Barger, *On the Internet, Nobody Knows You're a Judge: Appellate Courts' Use of Internet Materials*, 4 J. App. Prac. & Process 417 (2002).
2. Richard J. Matthews and Mary Alice Baish, *State-by-State Report on Authentication of Online Legal Resources*, Chicago: American Association of Law Libraries (2007). The implications of this lack of official status are significant and warrant consideration in greater detail, but that is for a later article.
3. *Id.* at p. 23.